UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,812	01/09/2004	Peter S. Schulte	29020/316A	1565

34431 7590 03/07/2007

HANLEY, FLIGHT & ZIMMERMAN, LLC
150 S. WACKER DRIVE
SUITE 2100
CHICAGO, IL 60606

EXAMINER	
STRIMBU, GREGORY J	
ART UNIT	PAPER NUMBER
3634	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/754,812	SCHULTE ET AL.	
	Examiner	Art Unit	
	Gregory J. Strimbu	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 December 2006 and 25 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) *5,13 and 23-30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-12,14-22 and 31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *9/11/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Election/Restrictions

Applicant's election with traverse of species I in the reply filed on April 17, 2006 is acknowledged. The traversal is on the ground(s) that the examiner has failed to provide any reasoning as to why each of the alleged species is independent or distinct, the examiner has failed to allege that it would be a serious burden on the examiner to consider all of the different species, and maintaining the restriction requirement is a serious burden on the applicant. This is not found persuasive because the examiner has provided reasoning as to why each of the species is independent and distinct. See page 2 of the Office action mailed March 17, 2006. Because the applicant has failed to address the examiner's reasoning why each of the species is patentably distinct, the applicant's comments in the reply of April 17, 2006 are not persuasive. Additionally, withdrawal of the restriction requirement would create a serious burden on the examiner because additional classes/subclasses would need to be searched in order to properly examine all of the patentably distinct inventions. Finally, maintaining the restriction requirement does not necessarily create an additional burden on the applicant. If a generic claim is found to be allowable, all of the applicant's patentably distinct inventions would be included in one patent. The requirement is still deemed proper and is therefore made FINAL.

Claims 5, 13 and 23-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 17, 2006.

Claim Rejections - 35 USC § 112

Claims 1-4, 6-12, 14-22 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "above the floor" on line 8 of claim 1 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a door or the combination of a door and a surrounding structure. The preamble of claim 1 implies the subcombination while the positive recitation of the floor on line 8 of claim 1 implies the combination. Recitations such as "takes a yield mode" on line 16 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. How does the resilient connection "take" a yield mode? Is the applicant attempting to set forth that the resilient connection assumes a yield mode? Recitations such as "exceed" on line 17 of claim 1 render the claims indefinite because they are grammatically awkward and confusing.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6-12, 14-19, 21, 22 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Linstadt. Linstadt discloses a door 3 being movable relative to surrounding structure 1 for at least partially covering a doorway 2 of a wall, comprising: an upper track 5, a door panel 3 suspended from the upper track and being movable horizontally across the doorway along a predetermined normal path; a lower track 8 disposed below the upper track and being attachable to one of the door panel and the surrounding structure; a panel retention system 12 adapted to be carried by one of the door panel and the surrounding structure, wherein the panel retention system is movably connected to the lower track such that the panel retention system and the lower track provide relative traveling motion therebetween to help guide the door panel along the predetermined normal path; and a resilient connection 14 provided by at least one of the lower track and the panel retention system, wherein the resilient connection takes a yield mode when the impact force exceeds a predetermined level and the door panel moves beyond the predetermined normal path, and afterwards the resilient connection automatically returns to a normal mode where the door panel is back within the predetermined normal path and the impact force is below the predetermined level, a spring 14 disposed within a tube 15, the spring is a tension spring because if a tension force were applied to the spring, it would resist said force, a pliable elongate member 12 coupling the spring 14 to the track 8, the elongate member is adjustable via the pin 16, a track follower 13.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linstadt as applied to claims 1, 2, 4, 6-12, 14-19, 21, 22 and 31 above. Linstadt is silent concerning the track being carried by the panel.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the track 3 carried by the panel 3, since it has been held that mere reversal of the essential working pars of a device involves no more than routine skill in the art. *In re Einstein*, 8 USPQ 167.

Response to Arguments

Applicant's arguments filed September 25, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's arguments concerning Linstadt, the examiner respectfully disagrees. It should first be noted that the applicant is claiming the subcombination of a door which is adapted to be used with a doorway, floor, etc. Therefore, the invention of Linstadt need only be capable of use with a floor as recited by the applicant in order to anticipate the applicant's claimed invention. Linstadt anticipates the applicant's claimed invention because it is clearly capable of use with a floor such that the lower track is disposed above the floor. Linstadt discloses that

element 6 is a sill which is well known in the art to be capable of sitting on a floor. In such a position, the lower track 8 would be above the floor. Therefore, Linstadt anticipates the applicant's claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
March 2, 2007